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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

RAMOS FELICIANO, ELISEO

ART UNIT	PAPER NUMBER
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2681

16

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/397,300

Applicant(s)

VALO et al.

Examiner

ELISEO RAMOS-FELICIANO

Art Unit

2681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 8, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11 is/are allowed.
- 6) ☒ Claim(s) 12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 2681

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 12 and 15** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. **Claim 12** recites the limitation "in data terminal equipment" in line 7. There is insufficient antecedent basis for this limitation in the claim.

The claim describes "a network element and "a mobile terminal". However, later recites "flow control in data terminal equipment" (emphasis added). It is not clear what "equipment" is being referred by the expression "in data terminal equipment". The claim will be treated on the merits as best understood.

4. **Claim 15** has the same problem as *claim 12* explained above. The claim will be treated on the merits as best understood.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

12, 76.03

Art Unit: 2681

has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. **Claims 12, 15 and 17** are rejected under 35 U.S.C. 102(e) as being anticipated by Snowden et al. (US Patent Number 5,974,032).

Regarding **claim 12, 15 and 17**, Snowden et al. discloses a method and apparatus for adjusting a data rate in a communication system. The system includes call receivers 2 (mobile terminal) and satellites 1 (network element) for exchanging a plurality of data units (block 420) with the call receivers, as exhibited in Figures 1 and 6-7. At least one data unit includes a bit rate indicator 460 (status bit) which is analyzed by the call receivers 2 (mobile terminal) to determine a change or adjustment in the data rate used to exchange the data units; see column 9, lines 24-67. Circuitry for providing (e.g. controller 76, Figure 5) the data unit that includes the bit rate indicator 460 (status bit) as well as circuitry for analyzing (e.g. processor 39, Figure 3) the status bit is included; see e.g. Figures 8-9, and the abstract. (See also column 5, lines 28-30 and column 9, line 66 to column 10, line 4).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2681

8. **Claims 13-14, 16 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Snowden et al. (US Patent Number 5,974,032) in view of Suzuki (US Patent Number 6,044,067).

Regarding **claims 13-14, 16 and 18**, Snowden et al. discloses everything claimed as applied above (see *claims 12 and 15*). In addition, it is the call receiver 2 (mobile terminal) who analyzes the bit rate indicator 460 (status bit) to determine a change or adjustment in the data rate used to exchange the data units; see step 950, Figure 9.

However, Snowden et al. fails to specify that the data rate is changed by changing the number of time slots, and that it is the mobile terminal who request such change.

As illustrated by Suzuki these are well known features for TDMA systems. Suzuki teaches that the data transmission rate between a base station (e.g. Snowden et al.'s satellite 1) and a mobile station/terminal (e.g. Snowden et al.'s call receiver 2) is changed by modifying the number of time slots used; see column 4, lines 40-58. The request may be originated at the mobile terminal; see column 17, lines 45-60.

Therefore, it would have been obvious at the time the invention was made to change the data rate by changing the number of time slots and originating the change request at Snowden et al.'s mobile terminal because the system is TDMA.

Remark

9. Paragraph 8 above is a repetition of paragraph 11 in last Office Action (Paper No. 14) with the correction of a typographical error: 18 (instead of 17).

Art Unit: 2681

Allowable Subject Matter

10. **Claims 1-11** are allowed.

11. The following is an examiner's statement of reasons for allowance:

Claims 1 and 11 are allowed because of the reasons provided by the applicant in the response filed on September 8, 2003 (Paper No. 15). See pages 6-8, section 4; particularly page 7, lines 2-5.

The prior art of record fails to anticipate or render obvious "detecting a need for bearer modification from received status indications in at least two consecutive data units" (emphasis added), in combination with all other limitations in the claim(s) as defined by applicant.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

12. Applicant's arguments filed on September 8, 2003 have been fully considered but they are not persuasive.

13. Applicant argues the 35 U.S.C. 112, second paragraph, rejection against claims 12 and 15 in last Office action. Applicant appears to be confused with the meaning of the rejection. The rejection stands because it is not clear **what** equipment is being referred by the phrase "in data terminal equipment". *The question is: Is the alluded equipment the same as the recited "network*

Art Unit: 2681

element”, the recited “mobile terminal”, or is it a newly introduced, different and distinct unit or “equipment”? Therefore, there is no sufficient antecedent basis in the claim.

Should the referenced equipment be something other than the recited “network element” and/or “mobile terminal”, the phrase should read --in a data terminal equipment--, since it is the first time the phrase appears in the claim.

14. With respect to *claims 1 and 15* and those dependent therein, Applicant argues that Snowden et al.’s status bit fails to indicate flow control (active or inactive) and requesting a change in data rate (see page 4, last paragraph to page 5 of the response). However, it has been noted that Snowden et al. teaches that “the bit rate at which demodulation is performed is determined by an optimum bit rate indicator 460 (FIG. 6) included in a received signal” (column 5, lines 28-30 of Snowden et al.). Since adjusting a data rate or bit rate represents flow control (see e.g. the title), Snowden et al.’s bit rate indicator 460 (status bit) meets the claimed limitations. If Snowden et al.’s bit rate indicator 460 (status bit) indicates, for example, 25,000 bps or 50,000 bps, the flow control is deemed to be active (see column 9, line 66 to column 10, line 4). If the bit rate is specified to 25,000 bps or 50,000 bps, in fact a change in data rate is requested.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2681

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. Any response to this Office action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9306

for formal communications intended for entry, informal communications or draft communications; in the case of informal or draft communications, please label "PROPOSED" or "DRAFT".

Hand-delivered responses should be brought to

Crystal Park II
2121 Crystal Drive
Arlington, VA
Sixth Floor (Receptionist).

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eliseo Ramos-Feliciano whose telephone number is (703) 305-0078. The examiner can normally be reached on Monday through Thursday (first week of bi-week) and Monday through Friday (second week of bi-week) from 8:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh N. Tran, can be reached on (703) 305-4040.

Art Unit: 2681

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700, or call Group customer service at (703) 306-0377.

ELISEO RAMOS-FELICIANO
PATENT EXAMINER

ERF/erf
November 5, 2003.


SINH TRAN
PRIMARY EXAMINER